TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 9

DONALD R. DOREMUS AND ANNA E. KLEIN,
APPELLANTS,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF HAWTHORNE AND THE STATE OF NEW JERSEY

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY

FILED FEBRUARY 16, 1951.

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[fol. 1]

IN SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, PASSAIC COUNTY

Civil Action Docket No. 5201-48

DONALD R. DOREMUS and ANNA E. KLEIN, Plaintiffs,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF HAWTHORNE, NEW JERSEY, AND THE STATE OF NEW JERSEY, Defendants

COMPLAINT—Filed April 21, 1949

Plaintiffs Donald R. Doremus residing in the Township of Rutherford, County of Bergen and State of New Jersey, and Anna E. Klein residing in the Borough of Hawthorne, County of Passaic and State of New Jersey, say that:

1. The interest of plaintiff Donald R. Doremus, in this case, is as a citizen and taxpayer of the State of New Jersey directly, and as a taxpayer in the Township of Rutherford and the State of New Jersey.

2. The interest of Anna E. Klein in this suit is that of a citizen and taxpayer of the Borough of Hawthorne and State of New Jersey and as the mother and person standing in loco parentis of her daughter Gloria Klein, age 17, who is a student in the Hawthorne High School.

[fol. 2] 3. The said Hawthorne High School is operated by the defendant, the Board of Education of Hawthorne, and is supported by public funds by the Borough of Hawthorne and by public funds appropriated by the State of New Jersey for the support of public schools.

4. The said Board of Education of Hawthorne by its agents, servants, and teachers in the said Hawthorne High School and other public schools of said Borough, is engaged in the practice of reading excerpts from that portion of the Holy Bible known as the Old Testament daily in the classrooms and assembly halls of said schools. This practice engaged in by the said Board of Education and persons employed by it, purports to be and is pursuant to a certain

statute or law of the state of New Jersey known as Revised Statutes 18:14-77, which law or statute provides as follows:

18:14-77. Reading Bible at opening of school

"At least five verses taken from that portion of the Holy Bible known as the Old Testament shall be read, or caused to be read, without comment, in each public school classroom, in the presence of the pupils therein assembled, by the teacher in charge, at the opening of school upon every school day, unless there is a general assemblage of the classes at the opening of the school on any school day, in which event the reading shall be done, or caused to be done, by the principal or teacher in charge of the assemblage and in the presence of the classes so assembled."

[fol. 3] 5. Plaintiffs charge that the aforesaid practice of reading certain verses daily from the said portion of Holy Bible known as the Old Testament, and the aforesaid state law upon which the practice is based and predicated, are contrary to the Constitution of the United States of America, specifically Amendment I and Amendment XIV, in that they constitute religious education and services in aid of one or more religions and in preference of one or more religions over others, and in that public funds and taxes are authorized to support religious activities and institutions and for the purpose of teaching and practicing religion, contrary to the Constitution and laws of the United States of America.

Wherefore, Plaintiff prays:

(a) That this court may construe the rights, statutes and other legal relations of the parties hereto with reference to the said practice and the aforesaid state law;

(b) That this court determine the validity, legality and constitutionality of the aforesaid state statute; that it determine and declare by its judgment that the said statute, to wit; Revised Statutes 18:14-77 is invalid, illegal, unconstitutional and contrary to the Constitution of the United States of America, and that the practice set forth above is invalid, illegal, and contrary to the laws and the Constitution of the United States of America;

(c) That the State of New Jersey and all its agencies be enjoined and restrained from compelling observance of the

said state statute and that it use its proper agencies to forbid and prohibit any others from observing and complying with said statute; and

[fol. 4] (d) That the aforesaid Board of Education in the Borough of Hawthorne and all persons in its employ be enjoined and restrained from observing and complying with the aforesaid statute and from reading or causing to be read in the public schools of said Borough any excerpts from the aforesaid portion of the Holy Bible known as the Old Testament or from any other religious book or tract.

(S.) Heyman Zimel, Attorney for Plaintiffs.

[fol. 5] In Superior Court of New Jersey, Passaic County
Law Division

[Title omitted]

Answer of Defendant Board of Education—Filed May 10, 1949

The Defendant Board of Education of the Borough of Hawthorne, New Jersey, having its office in the Municipal Building, Lafayette Avenue, Hawthorne, Passaic County, New Jersey, answering the Complaint of the Plaintiffs, Donald R. Doremus and Anna E. Klein, says:

1. It has no knowledge or information sufficient to form a belief as to the allegations of paragraphs 1 and 2 of the Complaint.

2. It admits the allegations of paragraphs 3 and 4 of the Complaint.

3. It denies the allegations of paragraph 5 of the Complaint.

Alexander E. Fasoli, Attorney for Defendant, Board of Education of the Borough of Hawthorne, N. J.

[fol. 6] In Superior Court of New Jersey, Law Division—Passaic County

[Title omitted]

Answer of Defendant State of New Jersey—Filed May 16, 1949

The Defendant, the State of New Jersey, by way of answer to the complaint filed herein says that

1. It has no knowledge or information concerning the status of the Plaintiff, Donald R. Doremus, and leaves him to his proof.

2. The Defendant, the State of New Jersey, has no knowledge or information concerning the status of Anna E. Klein, as a citizen and taxpayer, or as a mother and person standing in loco parentis of her daughter Gloria Klein, and leaves her to her proof.

3. The Defendant, the State of New Jersey, admits the allegations of Paragraph 3.

4. The Defendant, the State of New Jersey, admits the [fol. 7] allegations of Paragraph 4.

5. The Defendant, the State of New Jersey, denies the allegations of Paragraph 5.

First Separate and Affirmative Defense

The Defendant, the State of New Jersey, reserves the right at or before the trial of this cause to move to dismiss the complaint filed herein upon the ground that it states no legal cause of action.

Second Separate and Affirmative Defense

The Plaintiffs have no standing in Court to pursue the cause of action filed by them.

Third Separate and Affirmative Defense

The Plaintiffs are barred of the remedy in the cause of action by reason of the long standing practice and by the laches of the Plaintiffs in acting thereon.

Fourth Separate and Affirmative Defense

The Plaintiffs have improperly instituted said action in the Law Division of the Superior Court, whereas the relief sought in said action is equitable in nature.

Fifth Separate and Affirmative Defense

The Plaintiffs, in seeking the aid of equity, do not come into Court with clean hands, but for the purpose of dis-
[fol. 8] crediting the government of the United States and of this State.

Theodore D. Parsons, Attorney General of the State of New Jersey.

[fol. 9] In New Jersey Superior Court, Passaic County Law Division

[Title omitted]

Pretrial Conference Order—Filed November 17, 1949

Passaic County Courthouse, Paterson, N. J.,
Thursday, November 10, 1949, 2 P. M.

Appearances:

For Plaintiffs, Heyman Zimel.
For Defendants, Theodore D. Parsons, Alexander E. Fasoli.

Statement of Nature of Cause

This is an action in lieu of prerogative writ brought to test the constitutionality of R. S. 18:14-77; and by stipulation of counsel the complaint is amended to include an attack upon the succeeding section R. S. 18:14-78; plaintiff charging that both sections are illegal and unconstitutional and seeking to preclude the Board of Education of the
[fol. 10] Borough of Hawthorne and the State of New Jersey from operating thereunder.

Both parties move for summary judgment on the pleadings and waive notice and all formal requirements.

It is stipulated that the statute in question is in existence and that there is a compliance by the Board of Education of the Borough of Hawthorne.

Defendant Board of Education of the Borough of Hawthorne admits the statute and compliance, and it is stipulated that a directive issued by the Board provides that "any student may be excused during reading of the Bible upon request," and that in the present case neither parents nor child asked to be excused.

Defendant State of New Jersey admits the statute and compliance, waives its first separate defense by reason of the fact that it is merged in the motion for judgment, waives the second, fourth, and fifth defenses, and will press the third.

It is further stipulated by counsel that (1) the public schools of the Borough of Hawthorne and of the State of New Jersey are supported in part by public funds contributed by the State of New Jersey to school districts within the State of New Jersey for educational purposes, and in part by funds raised exclusively in the school district by levy of taxation of taxable property within the school district.

Set for trial, Monday, November 14, 1949.

Robert B. Davidson, A. J. S. C.

Heyman Zimel for plaintiffs.
Alexander E. Fasoli for defendant.
Theodore D. Parsons for defendant.

[fol. 11] In Superior Court of New Jersey, Passaic County Law Division

Docket No. 5201-48

Donald R. Doremus and Anna E. Klein, Plaintiffs,

vs.

Board of Education of the Borough of Hawthorne, New Jersey, and the State of New Jersey, Defendants

Civil Action

Final Judgment—Filed March 13, 1950

This cause coming on to be heard in the presence of Heyman Zimel, Esquire, Attorney for Plaintiffs, Alexander E. Fasoli, Esquire, appearing for defendant Board of Education of The Borough of Hawthorne, New Jersey, Theodore D. Parsons, Esq., Attorney General of New Jersey and Henry F. Schenk, Deputy Attorney General of New Jersey, appearing for defendant State of New Jersey, upon Complaint and upon argument heard in open Court, and the

Court having heard and considered the argument of counsel, and it appearing that Plaintiffs seek to test the constitutionality of the provisions of the Laws of New Jersey, with respect to religious services or exercises in the public schools of the State of New Jersey, more particularly, the Constitutionality of Title 18, Chapter 14, Sections 77 and 78 of the New Jersey Revised Statutes; and it further appear-[fol. 12] ing that the facts are not in dispute, and it further appearing that the said matter is presented for determination upon cross-motions for summary judgment on the pleadings.

It is thereupon, on this 8th day of March, 1950, Ordered and Adjudged that Defendants' motion for summary judgment be and the same is hereby granted and plaintiffs' motion denied.

Robert H. Davidson, A. J. S. C.

[fol. 13] In Superior Court of New Jersey, Passaic County Law Division

Donald R. Doremus and Anna E. Klein, Plaintiffs,

vs.

Board of Education of the Borough of Hawthorne, New Jersey, and the State of New Jersey, Defendants

Civil Action

Memorandum of Decision—Filed February 23, 1950

This action seeks to test the constitutionality of the provisions of the Laws of New Jersey with respect to religious services or exercises in the public schools of the state, and is presented for determination upon cross-motions for summary judgment on the pleadings. The statutes under attack are *N. J. S. A. 18:14-77:*

"Reading Bible at opening of schools.

"At least five verses taken from that portion of the Holy Bible known as the Old Testament shall be read, or caused to be read, without comment, in each public school classroom, in the presence of the pupils therein assembled, by the teacher in charge, at the opening of school upon every school day, unless there is a general

assemblage of the classes at the opening of the school on any school day, in which event the reading shall be [fol. 14] done, or caused to be done, by the principal or teacher in charge of the assemblage and in the presence of the classes so assembled."

and *N. J. S. A. 18:14-78:*

"Religious services or exercises.

"No religious service or exercise, except the reading of the Bible and the repeating of the Lord's Prayer, shall be held in any school receiving any portion of the moneys appropriated for the support of public schools."

Plaintiffs shortly contend that compliance with the statutes constitutes religious education and services in aid of one or more religions and in preference of one or more religions over others, and in that public funds and taxes are authorized to support religious activities and institutions and for the purpose of teaching and practicing religion, and so contravenes the First and Fourteenth Amendments to the Constitution of the United States, which read as follows:

"Article I

"Right of Conscience, Freedom of the Press, etc.

"Congress shall make no law respecting and establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

"Article XIV

"Citizens and Their Rights

"Section I

"All persons born or naturalized in the United [fol. 15] States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The facts are not in dispute. Plaintiff Doremus is a citizen and taxpayer of the Township of Rutherford, New Jersey, and plaintiff Klein is a citizen and taxpayer of the Borough of Hawthorne, New Jersey, and the mother of Gloria Klein, a student in the Hawthorne High School, which is a public school operated by the Board of Education and supported by public funds appropriated by the state and by said borough. Defendant Board of Education is complying with the laws and, although rules promulgated and directives issued by it permit any student to be excused from the classroom upon request when the Bible is read or the Lord's Prayer recited, no such request has ever been made by plaintiff Klein or her daughter. The matter, therefore, is submitted to the Court solely on the question of constitutionality, and appears to be of novel impression.

Although there is a diversity of opinion in the State courts as to statutes specifically permitting or requiring the Bible to be read in public schools, the great weight of authority generally seems to hold that such statutes do not contravene the provisions of the several State Constitutions.

That we are fundamentally a religious people is beyond [fol. 16] dispute. An excellent review of the American organic utterances which speak the voice of the entire people and which affirm and re-affirm that this is a religious nation, appears in *Church of the Holy Trinity* v. *United States*, 143 U.S. 457, wherein the Court said:

> "But beyond all these matters no purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people. This is historically true. From the discovery of this continent to the present hour, there is a single voice making this affirmation. The commission to Christopher Columbus, prior to his said westward, is from 'Ferdinand and Isabella, by the grace of God, King and Queen of Castile,' etc., and recites that 'it is hoped that by God's assistance some of the continents and islands in the ocean will be discovered,' etc. The first colonial grant, that made to Sir Walter Raleigh in 1584, was from 'Elizabeth, by the grace of God, of England, France and Ireland, queene, defender of the faith,' etc.; and the grant authorizing him to enact statutes for the government of the proposed colony provided that 'they be

not against the true Christian faith nowe professed in the Church of England.' The first charter of Virginia, granted by King James I in 1606, after reciting the application of certain parties for a charter, commenced the grant in these words: 'We, greatly commending, and graciously acception of, their Desires for the Furtherance of so noble a Work, which may, by the Providence of Almighty God, hereafter tend to the Glory of his Divine Majesty, in propagating of Chris- [fol. 17] tian Religion to such people, as yet live in Darkness and miserable Ignorance of the true Knowledge and Worship of God, and may in time bring the Infidels and Savages, living in those parts, to human Civility, and to a setled and quiet Government; DO, by these our Letter-Patents, graciously accept of, and agree to, their humble and well-intended Desires.'

"Language of similar import may be found in the subsequent charters of that colony, from the same king, in 1609 and 1611; and the same is true of the various charters granted to the other colonies. In language more or less emphatic is the establishment of the Christian religion declared to be one of the purposes of the grant. The celebrated compact made by the Pilgrims in the Mayflower, 1620, recites: 'Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country, a Voyage to plant the first Colony in the northern Parts of Virginia; Do by the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid.'

"The fundamental orders of Connecticut, under which a provisional government was instituted in 1638-1639, commence with this declaration: 'Forasmuch as it hath pleased the Allmighty God by the wise disposition of his divyne pruidence so to Order and dispose of things that we the Inhabitants and Residents of Windsor, Hartford and Wethersfield are now cohabiting and [fol. 18] dwelling in and uppon the River of Conecte-cotte and the Lands thereunto adjoyneing; and well knowing where a people are gathered together the word of God requires that to mayntayne the peace and union of such a people there should be and orderly

and decent Government established according to God, to order and dispose of the affayres of the people at all seasons as occasion shall require; doe therefore associate and conjoyne our selves to be as one Publike State or Comonwelth; and doe, for our selves and our Successors and such as shall be adjoyned to us att any tyme hereafter, enter into Combination and Confederation together, to mayntayne and presearve the liberty and purity of the gospell of our Lord Jesus wch we no prfesse, as also the disciplyne of the Churches, wch according to the truth of the said gospell is now practised amongst us.'

"In the charter of privileges granted by William Penn to the province of Pennsylvania, in 1701, it is recited: 'Because no people can be truly happy, though under the greatest Enjoyment of Civil Liberties, if abridged of the Freedom of their Consciences, as to their Religious Profession and Worship; And Almighty God being the only Lord of Conscience, Father of Lights and Spirits; and the Author as well as Object of all divine knowledge, Faith and Worship, who only doth enlighten the Minds, and Persuade and convince the Understandings of People, I do hereby grant and declare,' etc,

"Coming nearer to the present time, the Declaration [fol. 19] of Independence recognizes the presence of the Divine in human affairs in these words: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.' 'We, therefore, the Representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name and by Authority of the good People of these Colonies, solemnly publish and declare,' etc.; 'And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.'

"If we examine the constitutions of the various States we find in them a constant recognition of religious obli-

gations. Every constitution of every one of the forty-four States contains language which either directly or by clear implication recognizes a profound reverence for religion and an assumption that its influence in all human affairs is essential to the well being of the community. This recognition may be in the preamble, such as is found in the constitution of Illinois, 1870: 'We, the people of the State of Illinois, grateful to Almighty God for the civil, political and religious Liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations,' etc.

[fol. 20] "It may be only in the familiar requisition that all officers shall take an oath closing with the declaration 'so help me God.' It may be in clauses like that of the constitution of Indiana, 1816, Article XI, section 4: 'The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed the most solemn appeal to God.' Or in provisions such as are found in Articles 36 and 37 of the Declaration of Rights of the Constitution of Maryland, 1867: 'That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no person ought, by any law, to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent or maintain or contribute, unless on contract, to maintain any place of worship, or any ministry; nor shall any person, otherwise competent, be deemed incompetent as a witness, or juror, on account of his religious belief: Provided, He believes in the existence of God, and that, under His dispensation, such person will be held morally accountable for his acts, and be rewarded or punished therefor, either in this world or the world to come. That no religious test ought ever to be required as a

[fol. 21] qualification for any office of profit or trust in this State other than a declaration of belief in the existence of God; nor shall the legislature prescribe any other oath of office than the oath prescribed by this constitution.' Or like that in Articles 2 and 3, of Part 1st, of the Constitution of Massachusetts, 1780: 'It is the right as well as the duty of all men in society publicly and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the Universe ... As the happiness of a people and the good order and preservation of civil government essentially depend upon piety, religion and morality, and as these cannot be generally diffused through a community but by the institution of the public worship of God and of public instructions in piety, religion and morality: Therefore, to promote their happiness and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts and other bodies—politic or religious societies to make suitable provision, at their own expense, for the institution of public Protestant teachers of piety, religion and morality in all cases where such provision shall not be made voluntarily.' Or as in sections 5 and 14 of Article 7 of the constitution of Mississippi, 1832: 'No person who denies the being of a God, or a future state of rewards and punishments, shall hold any office in the civil department of this State ... Religion, morality [fol. 22] and knowledge being necessary to good government, the preservation of liberty, and the happiness of mankind, schools and the means of education, shall forever be encouraged in this State.'. Or by Article 22 of the constitution of Delaware, 1776, which required all officers, besides an oath of allegiance, to make and subscribe the following declaration: 'I, A. B., do profess faith in God and Father, and in Jesus Christ, His only Son, and the Holy Ghost, one God, blessed for evermore; and I do acknowledge the Holy Scriptures of the Old and New Testament to be given by divine inspiration.'

"Even the Constitution of the United States, which is supposed to have little touch upon the private life of the individual, contains in the First Amendment a declaration common to the constitutions of all the States, as follows: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' etc. And also provides in Article 1, section 7, (a provision common to many constitutions,) that the Executive shall have ten days (Sundays excepted) within which to determine whether he will approve or veto a bill.

"There is no dissonance in this declaration. There is a universal language pervading them all, having one meaning; they affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons: they are organic utterances; they speak the voice of the entire people. While because of a general recognition of this truth the question has [fol. 23] seldom been presented to the courts, yet we find that in *Updegraph v. The Commonwealth*, 11 S. & R. 394, 400, it was decided that, 'Christianity, general Christianity, is, and always has been, a part of the common law of Pennsylvania; . . . not Christianity with an established church, and tithes, and spiritual court; but Christianity with liberty of conscience to all men.' And in the *People v. Ruggles*, 8 Johns. 290, 294, 295, Chancellor Kent, the great commentator on American law, speaking as Chief Justice of the Supreme Court of New York, said: 'The people of this State in common with the people of this country, profess the general doctrines of Christianity, as the rule of their faith and practice; and to scandalize the author of these doctrines is not only, in a religious point of view, extremely impious, but, even in respect to the obligations due to society, is a gross violation of decency and good order . . . The free, equal and undisturbed enjoyment of religious opinion, whatever it may be, and free and decent discussions on any religious subject, is granted and secured but to revile, with malicious and blasphemous contempt, the religion professed by almost the whole community, is an abuse of that right. Nor are we bound, by any expressions in the Constitution as some have strangely supposed,

either not to punish at all, or to punish indiscriminately the like attacks upon the religion of Mahomet or of the Grand Lama; and for this plain reason, that the case assumes that we are a Christian people, and [fol. 24] the morality of the country is deeply ingrafted upon Christianity, and not upon the doctrines or worship of those impostors.' And in the famous case of *Vidal v. Girard's Executors*, 2 How. 127, 198, this court, while sustaining the will of Mr. Girard, with its provision for the creation of a college into which no minister should be permitted to enter, observed: 'It is also said, and truly, that the Christian religion is a part of the common law of Pennsylvania.'

"If we pass beyond these matters to a view of American life as expressed by its laws, its business, its customs and its society, we find everywhere a clear recognition of the same truth. Among other matters note the following: The form of oath universally prevailing, concluding with an appeal to the Almighty; the custom of opening sessions of all deliberative bodies and most conventions with prayer; the prefatory words of all wills, 'In the name of God, amen;' the laws respecting the observance of the Sabbath, with the general cessation of all secular business, and the closing of the court, legislatures, and other similar public assemblies on that day; the churches and church organizations which abound in every city, town and hamlet; the multitude of charitable organizations existing everywhere under Christian auspices; the gigantic missionary associations, with general support, and aiming to establish Christian missions in every quarter of the globe. These, and many other matters which might be noticed, and a volume of unofficial declarations to the mass of organic utterances that this is a Christian [fol. 25] nation."

This review of the background and environment of the period in which the constitutional language was fashioned and adopted is necessary if we are to determine the spirit and intention of the Congress which submitted the constitutional amendments to the people, and the intention of the people themselves in adopting them. Clearly, there was never any intention to prohibit nonsectarian recogni-

tion of God by the State in public transactions and exercises, and New Jersey has recently reaffirmed that intention, for the Preamble to the State Constitution of 1947 was carried over verbatim from the Constitution of 1844 and reads as follows:

> "We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution."

Mr. Justice Black, speaking for the Court in *Everson* v. *Board of Education.* (1947, 330 U. S. 1, 168 A. L. R. 1392, 91 L. Ed. 711, 67 S. Ct. 504), held that:

> "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished [fol. 26] for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.' *Reynolds* v. *United States, supra* (98 U. S. At 164, 52 L. Ed. 249)."

The First Amendment was intended to prohibit legislation for support of any religious tenets or the modes of worship of any sect, *Davis* v. *Beason* (1890), 133 U. S. 333, 342, 39 L. Ed. 637, 639, 10 S. Ct. 239, and as Justice Black himself, in the Everson case, *supra*, said:

> "New Jersey cannot consistently with the 'establishment of religion' clause of the First Amendment con-

> tribute tax-raised funds to the support of an institution which teaches the tenets and faith of any church,"

he doubtless construed "religion" as "sectarianism" or "religious tenets".

Evidence of this construction is further demonstrated by the fact that the states aid all religions by exempting church property from taxation and at the same time furnish state paid police and fire protection and all usual governmental services, while the national government has a chaplain [fol. 27] for each house of the Congress who daily invokes Divine blessing and guidance, and the armed forces have commissioned chaplains from early days. This, too, finds support in the Everson case, *supra*, for it holds that the purpose of the First Amendment "requires the State to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them."

In *Lewis* v. *Board of Education of the City of New York* (1955), 285 N. Y. Supp. 164, the Court said that:

> "Undisguised, the plaintiff's attack is on a belief and trust in God and in any system or policy of teaching which enhances or sustains or countenances or even recognizes that belief and trust. Such belief and trust, however, regardless of one's own belief, has received recognition in state and judicial documents from the earliest days of our Republic liberty for non-believers in God, by denial * * * to believers in a Deity, would be a mock liberty."

As there is no issue of prohibition upon the free exercise of religion, the crux of the sole question presented is whether the directed daily reading, without comment, in public school classrooms of five verses of the Old Testament of the Holy Bible, and the permissive repeating of the Lord's Prayer, in accordance with the New Jersey statutes, constitutes an "establishment of religion" as enjoined by the First Amendment. In other words, does it constitute denominational or sectarian instruction and thus support any religious tenets, or the mode of worship of any sect? [fol. 28] The great weight of authority in the state courts holds that the Bible itself is not a sectarian book and can be read in the schools to inculcate fundamental morality,

Vidal v. *Girard's Exrs.* (1844), 2 How. 127, 11 L. Ed. 205; *Evans* v. *Selma Union High School District* v. *Fresno County*, 193 Cal. 54, 222 P. 801, 802, 31 A. L. R. 1121; *Vollmar* v. *Stanley* (1927), 81 Colo. 276, 255 P. 610; *Freeman* v. *Sheve*, 59 L.R.A. 927, 932 (Neb. 1902); *Moore* v. *Monroe*, 52 Am. Rep. 444 (Iowa 1884); *Nessle* v. *Hum*, 2 Ohio Dec. 60; *Billard* v. *Bd. of Education of the City of Topeka*, 2 Ann. Cases 521 (Kan. Sup. Ct. 1904); *Pfeiffer* v. *Bd. of Education of Detroit*, 49 L.R.A. 536 (Mich. 1898); *Hacket* v. *Brooksville Graded School District*, 87 S. W. 792, 794, 120 Ky. 608, 69 L.R.A. 592, 117 Am. St. Rep. 599, 9 Ann. Cases 36; *Church* v. *Bullock* (*Tex.*), 109 S. W. 115, 16 L.R.A. (N. S.) 860.

Mr. Justice Jackson, concurring in *McCollum* v. *Board of Education* (Ill. 1948), 333 U. S. 203-256, said:

> "Authorities list 256 separate and substantial religious bodies to exist in the continental United States. Each of them, through the suit of some discontented but unpenalized and untaxed representative, has as good a right as this plaintiff to demand that the courts compel the schools to sift out of their teaching everything inconsistent with its doctrines. If we are to eliminate everything that is objectionable to any of these warring sects or inconsistent with any of their doctrines, we will leave public education in shreds. Nothing but educational confusion and a discrediting of the public school system can result from subjecting [fol. 29] it to constant law suits.
>
> "While we may and should end such formal and explicit instruction as the Champaign plan and can at all times prohibit teaching of creed and catechism and ceremonial and can forbid forthright proselyting in the schools, I think it remains to be demonstrated whether it is possible, even if desirable, to comply with such demands as plaintiff's completely to isolate and cast our of secular education all that some people may reasonably regard as religious instruction. Perhaps subjects such as mathematics, physics or chemistry are, or can be, completely secularized. But it would not seem practical to teach either practice or appreciation of the arts if we are to forbid exposure of youth to any religious influences. Music without sacred music, architecture minus the cathedral, or painting

without the scriptural themes would be eccentric and incomplete, even from a secular point of view. Yet the inspirational appeal of religion in these guises is often stronger than in forthright sermon. Even such a 'science' as biology raises the issue between evolution and creation as an explanation of our presence on this planet. Certainly a course in English literature that omitted the Bible and other powerful uses of our mother tongue for religious ends would be pretty barren. And I should suppose it is a proper, if not an indispensable, part of preparation for a worldly life to know the roles that religion and religions have played in the tragic story of mankind. The fact is that, for good or for ill, nearly everything in our culture [fol. 30] worth transmitting, everything which gives meaning to life, is saturated with religious influences, derived from paganism, Judaism, Christianity—both Catholic and Protestant—and other faiths accepted by a large part of the world's peoples. One can hardly respect a system of education that would leave the student wholly ignorant of the currents of religious thought that move the world society for a part in which he is being prepared.

"But how one can teach, with satisfaction or even with justice to all faiths, such subjects as the story of the Reformation, the Inquisition, or even the New England effort to found 'a Church without a Bishop and a State without a King,' is more than I know."

That the Bible, or any particular edition, has been adopted by one or more denominations as authentic, or by them asserted to be inspired, cannot make it a "sectarian book". The book itself, to be sectarian, must show that it teaches the peculiar dogmas of a sect as such, and not alone that it is so comprehensive as to include them by the partial interpretation of its adherents. Nor is a book sectarian merely because it was edited or compiled by those of a particular sect. It is not the authorship nor mechanical composition of the book, nor the use of it, but its contents, that give it its character. The question is not whether the version used is canonical or apocryphal. The King James translation of the Bible, or any edition of the Bible, is not a sectarian book and the reading thereof without comment in the public schools does not constitute

sectarian instruction. *Hackett* v. *Brooksville Graded School* [fol. 31] *Dist., supra.*

If the Bible, particularly the Old Testament, is not a sectarian book, it necessarily follows that a mere reading therefrom, without comment, cannot be called sectarian instruction, and as such, is not in violation of the First or Fourteenth Amendments, even to those persons known as atheists.

Nor is the reading of the Lord's Prayer in the opening exercises of public schools sectarian instruction. *Moore* v. *Monroe, supra; Billard* v. *Board of Education, supra; Church* v. *Bullock, supra; Hackett* v. *Brooksville Graded School Dist., supra.*

In construing a New Jersey statute in the Everson case, *supra,* the Court held that "We must consider the New Jersey statute in accordance with the foregoing limitations imposed by the First Amendment. But we must not strike that state statute down if it is within the state's constitutional power, even though it approaches the verge of that power."

My conclusion is that a repetition of the Lord's Prayer as a morning exercise, without comment or remark, for the purpose of quieting pupils and preparing them for their daily studies, and a reading from the Old Testament of the Holy Bible, without comment, as the book best adapted from which to teach children and youth the principles of piety, justice, and a sacred regard for truth, love for their country, humanity and a universal benevolence, are certainly not designed to inculcate any particular dogma, creed, belief or mode of worship, and accordingly, the provisions of the New Jersey statutes under review do not contravene the First and Fourteenth Amendments [fol. 32] of the United States Constitution.

Defendants' motion for summary judgment will be granted and plaintiffs' motion necessarily denied.

Dated: February 20, 1950.

Robert H. Davidson, A. J. S. C.

[fol. 33] IN SUPERIOR COURT OF NEW JERSEY LAW DIVISION—PASSAIC COUNTY

[Title omitted]

NOTICE OF APPEAL—Filed April 14, 1950

Notice is hereby given that the plaintiffs Donald R. Doremus and Anna E. Klein appeal to the Appellate Division of the Superior Court of New Jersey from the final judgment of the Superior Court of New Jersey, Law Division, Passaic County, granting defendants' motion for summary judgment and denying plaintiffs' motion for summary judgment, entered in this action on March 8, 1950.

Heyman Zimel, Attorney for Plaintiffs.

Dated: April 8th, 1950

[fol. 34] IN SUPREME COURT OF NEW JERSEY

Appeal Docket No. 560

Civil Action. On Appeal

MANDATE ON AFFIRMANCE—Filed Oct. 16, 1950

DONALD R. DOREMUS, et al., Plaintiffs-Appellants,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF HAWTHORNE, and the STATE OF NEW JERSEY, Defendants-Respondents

This cause having been duly argued before this Court by Mr. Heyman Zimel, counsel for the appellants and Mr. Henry F. Schenck, counsel for the respondents, and the Court having considered the same,

It is hereupon ordered and adjudged that the judgment of the said Superior Court—Law Division is affirmed with costs; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless otherwise ordered by this Court, and that the record be remitted to the Superior Court—Law Division to be there proceeded

with in accordance with the rules and practice relating to that court, consistent with the opinion of this Court.

Witness the Honorable Arthur T. Vanderbilt, Chief Justice, at Trenton on the 16th day of October, 1950.

Charles K. Barton, Clerk of the Supreme Court.

[File endorsement omitted.]

[fol. 35] IN SUPREME COURT OF NEW JERSEY

No. A-2 September Term 1950

DONALD R. DOREMUS and ANNA E. KLEIN, Plaintiffs-Appellants,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF HAWTHORNE, and the STATE OF NEW JERSEY, Defendants-Respondents.

Argued September 18, 1950. Decided Oct. 16, 1950

Mr. Heymen Zimel argued the cause for appellants.

Mr. Henry F. Schenck, Deputy Attorney General, argued the cause for respondents. Mr. Theodore D. Parsons, Attorney General, and Mr. Alexander E. Fasoli on the brief.

Mr. Albert McCay filed a brief for State Council of the Junior Order of United American Mechanics of the State of New Jersey as *amicus curiae*.

OPINION—Oct. 16, 1950

The opinion of the court was delivered by

Case, J. The judgment under appeal was entered in the Law Division of the Superior Court, Passaic County, and was brought here on our certification. The action was originated under the Declaratory Judgment Act by a proceeding in lieu of prerogative writ to test the constitutionality of R. S. 18: 14-77 and -78. Those statutory provisions are:

> 18:14-77. "At least five verses taken from that portion of the Holy Bible known as the Old Testament shall be read, or caused to be read, without comment, in each public school classroom, in the presence of the pupils therein assembled, by the teacher in charge, at

the opening of school upon every school day, unless there is a general assemblage of the classes at the opening of the school on any school day, in which event the reading shall be done, or caused to be done, by the principal or teacher in charge of the assemblage and in the presence of the classes so assembled."

18:14-78. "No religious service or exercise, except the reading of the Bible and the repeating of the Lord's Prayer, shall be held in any school receiving any portion of the moneys appropriated for the support of public schools."

Section 77 was enacted as ch. 263, P. L. 1916, slightly different in arrangement but with the same substance. Section 78 was enacted as sec. 114 of ch. 1 (2nd Special Session), P. L. 1903 (the general school act). Its predecessor was a provision in section 65 of the School Act Revision of 1867, [fol. 36] ch. 179, P. L. 1867, as follows:

"It shall not be lawful for any teacher, trustee, or trustees, to introduce into or have performed in any school receiving its proportion of the public money, any religious service, ceremony or forms whatsoever, except reading the Bible and repeating the Lord's Prayer."

That provision was retained in sec. 65 of the Revision of 1867, (Rev. 1877 p. 1081, sec. 65), and in the amendatory Supplement of 1894 (ch. 102, P. L. 1894, Plac. 220, p. 3052 Gen. Stat. 1895).

Considered with the statute was the directive issued by the defendant Board of Education of the Borough of Hawthorne that "any student may be excused during the reading of the Bible upon request." There was no request that a student be excused. The public schools which provide the occasion for the controversy are supported in part by public funds contributed by the state to the school district for educational purposes and in part by funds raised exclusively in the school district by levy upon taxable property within the school district. There were no disputed facts. On cross motions for summary judgment on the pleading judgment went for the defendants, based on a holding that the statutory proceedings do not contravene the First or the Fourteenth Amendment of the United States Constitution.

Appellants present this line of reasoning: The principle of the separation of the church and state is established in the constitution of the United States, namely, the first and fourteenth amendments which prohibit the intermingling of religious and secular education in the public schools; the reading of the Bible and the reciting of the Lord's Prayer in the public schools are religious services, religious exercises and religious instruction; they are of themselves in aid of one or more religions and in preference of one religion over another; and therefore those acts are contrary to the named constitutional provisions. The gist of the argument is that compliance with the statute necessarily involves sectarian worship and sectarian instructions and therefore violates the Federal Constitution.

The effective parts of the First and Fourteenth Amendments are these:

> [fol. 37] I. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *"
>
> XIV. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The pertinency of the Fourteenth Amendment is that it carried over to the states the prohibition imposed by the First Amendment upon Congress against impairing religious rights of individuals. Therefore our question is whether the New Jersey statute violates the injunction which the first amendment lays against making a law respecting an establishment of religion or preventing the free exercise thereof.

No one is before us asserting that his religious practices have been interfered with or that his right to worship in accordance with the dictates of his conscience has been suppressed. No religious sect is a party to the cause. No representative of, or spokesman for, a religious body has attacked the statute here or below. One of the plaintiffs is

"a citizen and taxpayer"; the only interest he asserts is just that and in those words, set forth in the complaint and not followed by specification or proof. It is conceded that he is a citizen and a taxpayer, but it is not charged and it is neither conceded nor proved that the brief interruption in the day's schooling caused by compliance with the statute adds cost to the school expenses or varies by more than an incomputable scintilla the economy of the day's work. The other plaintiff, in addition to being a citizen and a taxpayer, has a daughter, aged seventeen, who is a student of the school. Those facts are asserted, but, as in the case of the co-plaintiff, no violated rights are urged. It is not charged that the practice required by the statute conflicts with the convictions of either mother or daughter. Apparently the sole purpose and the only function of plaintiffs is that they shall assume the role of actors so that there may be a suit which will invoke a court ruling upon the constitution-
[fol. 38] ality of the statute. Respondents urge that under the circumstances the question is moot as to the plaintiffs-appellants and that our declaratory judgment statute may not properly be used in justification of such a proceeding. *Cf. New Jersey Turnpike Authority vs. Parsons*, 3 N. J. 235; *Massachusetts vs. Mellon*, 262 U. S. 447, at 488, 67 Law Ed. 1078, at 1085, 43 Sup. Ct. 597 (1923). The point has substance but we have nevertheless concluded to dispose of the appeal on its merits.

Was it the intent of the First Amendment that the existence of a Supreme Being should be negated and that the governmental recognition of God should be suppressed? Not that, surely. The temper of the times during which the agitation for and the accomplishment of the amendment was had, the events which led to the adoption of the amendment, the contemporaneous and subsequent interpretation by way of statute and public practice, the very wording of the amendment, all forcefully support that answer.

Instances could be multiplied going to the undeniable result that the Constitution itself assumes as an unquestioned fact the existence and authority of God and that preceding, contemporaneously with and after the adoption of the constitutional amendment all branches of the government followed a course of official conduct which openly accepts the existence of God as Creator and Ruler of the Universe; a course of conduct that has been accepted as not in conflict with the constitutional mandate.

The United States Constitution in Article I, section 7 provides that the President shall have ten days (Sundays excepted) within which to determine whether he will affirm or veto a bill. The essential idea of an oath seems to be that it is a recognition of God's authority and an undertaking by the affiant to accomplish the transaction to which it refers as required by His laws. *Bouvier's Law Dictionary.* The constitution recognized that divine authority by directing that in the alternative an oath or an affirmance be taken in certain instances. With particularity it framed the oath, or affirmance, to be taken by the president. The origin of the privilege, in the alternative, to affirm rather than to take an oath is not to be understood, necessarily, as a concession [fol. 39] to disbelief in God. The privilege was accorded, or at least made more generous, in New Jersey, in 1727 because the Quakers, although a God-fearing group, were conscientiously scrupulous against taking an oath. See Allinson's Laws, (New Jersey, 1776), page 75.

The first ten amendments, called the Bill of Rights, were offered and adopted speedily after the adoption of the constitution and were a product of the motives and conditions which culminated in the parent instrument. The confederated colonies and, later, the states organized as a constitutional nation, acknowledged the existence of and bowed before the Supreme Being. The Declaration of Independence, phrased in the political ideology of Thomas Jefferson, frankly grounded its position in the unalienable rights endowed by God, the Creator; made appeal to Him, the Supreme Judge of the world for the rectitude of that position and expressed trust in the Divine Providence for protection in the fulfillment thereof. The articles of confederation recited the beneficent intervention of the Great Governor of the world.

Contemporary construction of a constitutional provision which has been followed since the founding of our government is entitled to the greatest respect. *Ex Parte Richard Quirin*, 317 U. S. 1, 41, 87 Law Ed. 3, 20, 63 Sup. Ct. 2 (1942). *State vs. Wrightson*, 56 N. J. L. 126, 20 (Sp. Ct. 1893). Specifically, Acts by the First Congress, which proposed the first ten amendments, have been judicially considered as of the highest authority in providing a contemporaneous exposition of constitutional provisions. *Patton vs. United States*, 281 U. S. 276, 300, 74 Law Ed. 854, 864, 50 Sup. Ct. 253 (1929); *Myers vs. United States*, 272 U. S. 52, 174, 71

Law Ed. 160, 189, 47 Sup. Ct. 21 (1926). On September 24, 1789, the day the first Congress adopted the resolution submitting the First Amendment to the states, it adopted a resolution requesting the president to recommend to the people "a day of public thanksgiving and prayer, to be observed by acknowledging, with grateful hearts, the many signal favors of Almighty God, especially by affording them an opportunity to establish a Constitution of govern- [fol. 40] ment for their safety and happiness." Benton, T. H. (Ed.), Annals of Congress, Abridged by J. C. Rivers (New York, D. Appleton-Century Co., 1858), Vol. I, pp. 914-915. That Congress also adopted a resolution providing for a chaplain for each house (id. p. 932); and every session of congress, from that time forward, has been convened with prayer.

Courts have functioned normally since before our national history began upon the assumption of the sanctity of an oath. Public officers uniformly qualify by being sworn. The statute (Tit. 28 § 453, U. S. C. A.) upon the taking of an oath by the justices and judges of the United States courts is illustrative:

> "Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: 'I, ———— do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as —— according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. *So* help me God."

The Thanksgiving Proclamation issued annually by the president, founded originally in resolution and continued through the years by tradition, gives, by its continuity and content, a striking reflection of the acceptance by our nation, and specifically by our government, of the idea and the existence of God. Our coined dollar for years beyond memory has carried the inscription "In God We Trust". It seems, *McCullum vs. Board of Education*, 333 U. S. 203, 254, 92 Law Ed. 649, 680, (dissenting opinion of Mr. Justice Reed) that not only does Congress still have in each house a chaplain who daily invokes divine blessings and guidance for the proceedings but that the armed forces have had com-

missioned chaplains from early days and that these chaplains, so commissioned, conduct public services in accordance with the liturgical requirements of their several faiths; and that chaplains are attached to each of the schools, governmentally supported and controlled, for the training of military and naval cadets. The United States Congress has enacted (Sec. 1464 New Title 18 Crimes and Criminal Procedure Act of June 25, 1948, U. S. C. A.) that "whoever [fol. 41] utters any * * * profane language by means of radio communication shall be fined not more than $10,000.00 or imprisoned not more than two years, or both". In our national anthem we reverently sing:

> "* * * May the heav'n rescued land, Praise the Power that hath made and preserved us a nation, Then Conquer we must, when our cause it is just, And this be our motto—'In God is our trust,' "

What has been said of the federal government could almost be repeated *mutatis mutandis*, with reference to our state. For illustrations: with respect to blasphemy, our own statute, R. S. 2:165-2, provides that any person who shall willfully blaspheme the name of God shall be guilty of a misdemeanor. An early statute, III Anne, 1704, Allinson p. 3, punished, *inter alia*, "cursing" and "swearing". But the Crimes Act of March 18, 1796, Paterson's Laws, page 211, provided in section 20 the statutory cast that has come down through the various revisions without great change. Elmer's Digest (1838) p. 105, sec. 20. Nixon's Digest (1868) p. 195, sec. 22. Revised Statutes 1874 p. 144, sec. 66. Rev. 1877, p. 238, sec. 66, ch. 235, sec. 73, P. L. 1898, 2 C. S. p. 1770 § 73. Property used for religious purposes has long been and is largely exempt from taxation. Pamph. Laws 1851, p. 272; ch. 372, sec. 1, Pamph. Laws 1931; N. J. S. A. 54:4-3.6. Beyond that it may suffice for the purpose of showing our governmental attitude to refer to a persistent and specific recognition of "Almighty God" in the several constitutions of our state. The first constitution, adopted July 2nd, 1776, provided (Art. XVIII) that "No person shall ever within this colony be deprived of the inestimable privilege of worshiping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatsoever compelled to attend any place of worship, contrary to his own faith and judgment". The second

constitution, effective September 2nd, 1844, contained this preamble:

> "We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution:"

[fol. 42] It also repeated, in Art. I, par. 3, the language quoted *supra* (except the words "ever within this colony") from the first constitution. In both respects our present constitution, adopted in 1947, follows the 1844 instrument.

The United States Supreme Court, speaking through Mr. Justice Brewer in *Church of the Holy Trinity vs. United States*, 143 U. S. 457, 36 Law. Ed. 226, 12 Sup. Ct. 511 (1892), found no dissonance in the provisions of the first amendment and various official declarations placing God at the apex of all things and said: "There is a universal language pervading them all, having one meaning; they affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations, of private persons; they are organic utterances; they speak the voice of the entire people."

Appellants rely mainly on the decisions in the United States Supreme Court in *Everson vs. Board of Education*, 330 U. S. 1, 91 Law Ed. 711 (1947), and *McCollum vs. Board of Education, supra*, (1948).

In the *Everson* case a New Jersey statute authorized the local school districts to make rules and contracts for the transportation of children to and from schools. A local school board, pursuant to the statute, authorized reimbursements to parents of money expended by them for the bus transportation of their children on regularly operated buses. A part of the money was for the payment of transportation of children to Catholic parochial schools. A taxpayer challenged the right of the board to reimburse parents of parochial school students and contended that the resolution violated both the State and the Federal Constitutions. The highest court of this state held (133 N. J. L. 350) that neither the statute nor the resolution was in conflict with either the State Constitution or the Federal Constitution. On appeal the United States Supreme Court decided that the statute and the resolution did not violate either the due

process clause of the Fourteenth Amendment or the provision of the First Amendment that no law shall be made "respecting an establishment of religion":

[fol. 43] A decision holding that a state may use tax moneys to transport children to a parochial school without violating the coinstitutional provision against an establishment of religion is not, we conceive, an effective holding against the constitutionality of a state statute directing the reading without comment of a few Bible verses in a classroom. The issues are quite different. And the reasoning of the opinion does not, we think, have the pertinency for which appellants argue.

In the *McCollum* case the facts are shortly stated in a summary prefixed to the case as reported in 92 Law. Ed. 649, as follows: "A local board of education in Illinois agreed to the giving of religious instruction in the schools under a 'released time' arrangement whereby pupils whose parents signed 'request cards' were permitted to attend religious-instruction classes conducted during regular school hours in the school building by outside teachers furnished by a religious council representing the various faiths, subject to the approval and supervision of the superintendent of schools. Attendance records were kept and reported to the school authorities in same way as for other classes; and pupils not attending the religious instruction classes were required to continue their regular secular studies." The court held that the facts showed the use of tax-supported property for religious instruction and a close cooperation between the school authorities and the religious council in promoting religious education, and, further, that the tax-supported public school buildings were used for the dissemination of religious doctrines and the state afforded sectarian groups invaluable aid in that it helped to provide pupils for their religious classes through use of the state's compulsory public school machinery. Legally the court found that the arrangement was not a separation of church and state and therefore was in violation of the First Amendment. The facts are, upon their face, so different from ours that no discussion of them seems to be necessary. The outstanding feature of that case was that school property was being used for sectarian instruction and the correlated fact in the present case is that there was no sectarian act.

[fol. 44] Appellants contend that the statutory direction provides for religious instruction and religious worship and

is in aid of one or more religions and in preference of one religion over another; and it is upon that argument that they seek support in the *Everson* and *McCollum* decisions. No charge is made that, in the reading, passages were selected with the purpose or the result of giving a sectarian bias; the Bible itself is indicted as sectarian. We are of the opinion that the characterizations of the statute and of the Book are not sound, that the holdings in the cited cases involve essential elements wholly lacking in the instant case, and that consequently the decisions are not in point and are not binding. Further, we think that the reasoning followed in reaching those decisions was not intended to, and does not, reach the facts of the present case.

Appellants concede that there are twelve states which prescribe the reading of the Bible in public school classes: Alabama, Arkansas, Delaware, Florida, Georgia, Idaho, Kentucky, Maine, Massachusetts, Pennsylvania, Tennessee and New Jersey; and that the statutes of five other states make its use permissive: Indiana, Iowa, Kansas, North Dakota and Oklahoma; and also that the cases on the subject which sustain the reading of the Bible (among them decisions by the courts of Texas, Colorado, Michigan, Minnesota and New York) outnumber the cases in which Bible reading was interdicted. It could be added that a bylaw of the Board of Education (Bylaws, Dist. of Columbia Board of Education, chap. 6, sec. 4) requires the reading of the Bible and the Lord's Prayer in the public schools of the District of Columbia; that a Mississippi statute (Mississippi Code, 1942, Title 24, sec. 6672) requires a course in the Principles of Morality and Good Manners; the same to include "the mosaic ten commandments"; and that the Bible is read in a large number of schools in many states where the statutes are silent on the subject.

Appellants further state that the reading of the Bible in the public schools has been struck down in Illinois, Louisiana, Wisconsin and Ohio; and that while decisions upholding [fol. 45] the reading of the Bible are more numerous, the better reasoning, "considered in the light of the United States Supreme Court decisions in the Everson and McCollum cases", leads inevitably to the conclusion of unconstitutionality. We have given our reasons for believing that the last named Supreme Court decisions do not lead to or lean toward that conclusion; and we are not impressed by the alleged pertinency of the state decisions cited by appel-

lants. *Finger vs. Weedman*, 226 N. W. 348 (S. Dakota Sup. Ct. 1929), while adverse to Bible reading in the schools does not appear to have held the state statute unconstitutional and said that the public schools could, without opposition, "teach that there is an All-Wise Creator to whom we owe love, reverence, and obedience". The Ohio case of *Board of Education vs. Minor*, 23 Ohio St. 211 (1872) was to the effect that inasmuch as the constitution of the state did not enjoin or require religious instruction or the reading of religious books in the public schools the court had no rightful authority to command the boards of education as to what instruction shall be given or what books should be read. The Wisconsin case of *State ex rel. Weiss vs. District Board of Education*, 76 Wis. 177, 7 L. R. A. 330 (Wisconsin Sup. Ct. 1890), arose on a petition to compel the reading of the Bible, and the holding was that the state constitution forbade the practice. *Ring vs. Board of Education*, 245 Ill. 334, 92 N. E. 251 (Illinois Sup. Ct. 1910), held that the First Amendment to the Federal Constitution left the states free to enact such laws as they might deem proper with respect to religion, restrained only by limitations of the respective state constitutions, but that the reading of the Bible, the singing of hymns and the repeating of the Lord's Prayer were in violation of the provisions of the constitution of the State of Illinois. In *Herold vs. Parish Board*, 136 La. 1034, 68 So. 116, 56 L. R. A. (N. S.) 1915D 941 (Louisiana Sup Ct. 1915), the headnotes, drawn by the judge who wrote the opinion, stated that the reading of the Bible, including the Old and New Testaments, in the public schools, was a preference given to Christians and a discrimination made against Jews, and therefore was a violation of the constitution of the State [fol. 46] of Louisiana. The opinion mentioned the First Amendment of the Federal Constitution, but it is evident that (1) the holding was not on that provision and (2) that the holding turned largely upon the inclusion of the New Testament in the school exercises there under review. Those cases are appellants' chief reliance in that branch of their argument which goes to the position of states adverse to Bible reading.

Cooley (Constitutional Limitations, Eighth Edition, Vol. 2, p. 966) lists five things which are not lawful under any of the American constitutions, namely, (1) any law respecting an establishment of religion, (2) compulsory support, by taxation or otherwise, of religious instruction, (3) com-

pulsory attendance upon religious worship, (4) restraints upon the free exercise of religion according to the dictates of the conscience, (5) restraints upon the expression of religious belief. But, he adds (p. 974), "while thus careful to establish, protect, and defend religious freedom and equality, the American constitutions contain no provisions which prohibit the authorities from such solemn recognition of a superintending Providence in public transactions and exercises as the general religious sentiment of mankind inspires, and as seems meet and proper in finite and dependent beings. Whatever may be the shades of religious belief, all must acknowledge the fitness of recognizing in important human affairs the superintending care and control of the great Governor of the Universe, and of acknowledging with thanksgiving His boundless favors, of bowing in contrition when visited with the penalties of His broken laws".

We consider that the Old Testament, because of its antiquity, its content, and its wide acceptance, is not a sectarian book when read without comment. *Cf. Vidal vs. Girard's Executors*, 2 Howard 127, 200, 11 Law Ed. 205, 235 (1844); *Hackett vs. Brooksville Graded School District*, 120 Ky. 608, 87 S. W. 792, 69 L. R. A. 592 (Kentucky Court of Appeals 1905). It is accepted by three great religions, the Jewish, the Roman Catholic and the Protestant, and, at least in part, by others. There are different versions, [fol. 47] but the statute makes no distinction. The adherents of those religions constitute the great bulk of our population. There are religious groups other than the Jewish, the Roman Catholic and the Protestant but in this country they are numerically small and, in point of impact upon our national life, negligible. This is not a criticism, simply the statement of a fact from which it is to be gathered that the tenets of these minor groups had no vital part in the formation of our national character. And it is not to say that because a religious group is small, it thereby loses its constitutional rights or that it is not entitled to the protection of those rights. The application is that some of our national incidents are developments from the almost universal belief in God which so strongly shaped and nurtured our people during the colonial period and the formative years of our constitutional government, with the result that we accept as a commendable part of our public life certain conditions and practices which in a country of

different origins would be rejected; just as some acts would be offensive here which, as Cooley (supra, p. 975) says, "in a Mahometan or Pagan country might be passed by without notice, or even be regarded as meritorious". Again, take the instance of an atheist: he has all the protection of the constitution; he may not be held to any religious function or to the support, financial or otherwise, of a religious establishment; he may entertain his belief or the lack of belief as he will; but he lives in a country where theism is in the warp and woof of the social and the governmental fabric and he has no authority to eradicate from governmental activities every vestige of the existence of God. He could not, we hypothesize, prevent, on constitutional grounds, the houses of Congress from opening their sessions with prayer to the Almighty for guidance in their deliberations, even though he were a member of Congress, or from maintaining chaplains for service with the armed forces, even though he were a member of those forces. *Cf. Lewis vs. Board of Education*, 157 Misc. 520, 285 N. Y. Supp. 164 (1935), modified 247 App. Div. 106, 286 N. Y. Supp. 174; rehearing denied, 247 App. Div. 873, 288 N. Y. Supp. 751; [fol. 48] appeal dismissed 276 N. Y. 490, 12 N. E. 2d 172 (N. Y. Ct. of Appeals 1937). A situation so supposed would be more exposed than our own to a charge of sectarianism because the argument might point to the sectarian affiliations of the clergyman or the chaplain. We are speaking in terms of the constitution upon the situations which that document was intended to reach, specifically upon whether or not the inhibition against the making of a law respecting an establishment of religion or prohibiting the free exercise thereof is violated by the reading, without comment, of a few verses, daily, in our public schools, from the Old Testament, and upon whether a statute which requires that to be done sets up religious instruction, or religious worship; which, within the meaning of our cases, is in aid of one or more religions, or prefers one religion above another. The reading does not, obviously, effect or tend to effect the setting up, or the establishment, of a religion, and, just as obviously, it does not prohibit the free exercise of any religion. We have noted the absence of allegation or proof that the plaintiffs or either of them are harmed by the statute of which they complain and we have withheld from considering a disposal of the case upon that technical ground; but we should, and do, recall that no burden of participa-

tion is put upon a pupil by the statute, and that by the regulation of the school board under whose jurisdiction the issue arose a pupil would, upon request, be excused from the classroom during the brief exercises. The contention that one religion is preferred above another is vague and intangible; no religious group is a party to the cause; no person or sect is charging that his or its beliefs are prejudiced. The incidents which were condemned in the McCollum case as being contrary to the separation of church and state appear to be entirely absent.

As to the permissive repeating of the Lord's Prayer: That short supplication to the Divinity was given its name because it was enjoined by Christ as an appropriate form of prayer. It is used by Roman Catholics and Protestants with slight variations. But nothing therein is called to our attention as not proper to come from the lips of any be- [fol. 49] liever in God, His fatherhood, and His supreme power. Christ was a Jew and He was speaking to Jews; and it is said, on excellent Jewish authority, (Dr. Philip Bernstein, Rabbi of the Temple B'reth Kodesh, Rochester, N. Y., "What the Jews Believe", Life Magazine September 11, 1950, p. 161), that the prayer was based upon the ancient Jewish prayer called "The Kaddish"—"Exalted and hallowed be the name of God throughout the world . . . May His Kingdom come, His will be done". We find nothing in the Lord's Prayer that is controversial, ritualistic or dogmatic. It is a prayer to "God, our Father". It does not contain Christ's name and makes no reference to Him. It is, in our opinion, in the same position as is the Bible reading and needs no special comment beyond what has just been said. *Cf. Church vs. Bullock*, 109 S. W. 115, 16 L. R. A. (N. S.) 860 (Texas Supreme Ct. 1908).

While it is necessary that there be a separation between church and state, it is not necessary that the state should be stripped of religious sentiment. It may be a tragic experience for this country and for its conception of life, liberty and the pursuit of happiness if our people lose their religious feeling and are left to live their lives without faith. Who can say that those attributes which Thomas Jefferson in his notable document called "unalienable rights" endowed by the Creator may survive a loss of belief in the Creator? The American people are and always have been theistic. *Cf. Church of the Holy Trinity vs. United States, supra.* The influence which that force contributed to our

origins and the direction which it has given to our progress are beyond calculation. It may be of the highest importance to the nation that the people remain theistic, not that one or another sect or denomination may survive, but that belief in God shall abide. It was, we are led to believe, to that end that the statute was enacted; so that at the beginning of the day the children should pause to hear a few words from the wisdom of the ages and to bow the head in humility before [fol. 50] the Supreme Power. No rites, no ceremony, no doctrinal teaching; just a brief moment with eternity. Great results follow from elements which to human perception are small. It may be that the true perspective engendered by that recurring short communion with the eternal forces will be effective to keep our people from permitting government to become a man-made robot which will crush even the constitution itself. Our way of life is on challenge. Organized atheistic society is making a determined drive for supremacy by conquest as well as by infiltration. Recent history has demonstrated that when such a totalitarian power comes into control it exercises a ruthless supremacy over men and ideas, and over such remnants of religious worship as it permits to exist. We are at a crucial hour in which it may behoove our people to conserve all of the elements which have made our land what it is. Faced with this threat to the continuance of elements deeply imbedded in our national life the adoption of a public policy with respect thereto is a reasonable function to be performed by those on whom responsibility lies. Subject to constitutional limitations, the legislature has exclusive jurisdiction over matters of public policy, *Schenley Products Co. v. Franklin Stores Co.*, 124 N. J. Eq. 100, 105 (E. & A. 1937), *State vs. Dongvan*, 129 N. J. L. 478, 486 (Sup. Ct. 1943), and the courts should be very sure of their ground before they restrict that legislative field.

The statute under attack has been on the statute books for 47 years, and the substance of it, that is, the permission to read the Bible and to repeat the Lord's Prayer, for more than eighty years. It is common knowledge that the schools have conducted those exercises throughout such periods. This has been without question until now. As was said in *Legg vs. Passaic County*, 122 N. J. L. 100 (Sup. Ct. 1939), affirmed 123 N. J. L. 263 (E. & A. 1939), " * * * one of the fundamental policies of our jurisprudence is not to declare unconstitutional a statute which has been in force

without any substantial challenge for many years unless its unconstitutionality is obvious". To same effect: *Attorney* [fol. 51] *General vs. McGuinness*, 78 N. J. L. 346, 371 (E. & A. 1909), *Jersey City vs. Kelly*, 134 N. J. L. 239 (E. & A. 1946), *Robertson vs. Baldwin*, 165 U. S. 275, 41 Law. Ed. 715, at 719, 17 Sup. Ct. 326 (1897).

Manifestly, as we have indicated, the disputed statutes do not impinge upon the strict wording of the First Amendment. They do not go to the establishment of religion or against the free exercise thereof. How far the intendment of the amendment goes beyond the literal phrasing thereof has never been determined. But it is clear, we think, that the sense of the amendment does not serve to prohibit government from recognizing the existence and sovereignty of God and that the motives which inspired the amendment and the interpretation given by the several departments of the Federal Government concurrently with and subsequent to the submission and adoption of the amendment are inconsistent with any other conclusion. It is a cardinal rule in the construction of constitutional and statutory enactments that the provision made by way of remedy shall be studied in the light of the evil against which the remedy was erected. The conditions which gave rise to the First Amendment have been graphically portrayed by Mr. Justice Black in the opinion written by him for the United States Supreme Court in the *Everson* case; a factual background which doubtless ruled the decisions in that case and in the McCollum case; and a background to which, as we believe, the facts in the instant case have no real similarity. The lure is to color all things, including fundamental facts, with the philosophy prevailing at the hour of observation; but facts are facts, stark and naked; they do not change. The fact is that the First Amendment does not say, and so far as we are able to determine was not intended to say, that God shall not be acknowledged by our government as God. Our view is that a prohibition which is not in the language of the amendment and which is contrary to the intention of those who framed and adopted the instrument should not now be read into it. We consider that the Old Testament and the Lord's Prayer, pronounced without comment, are not sectarian, and that [fol. 52] the short exercise provided by the statute does not constitute sectarian instruction or sectarian worship but is a simple recognition of the Supreme Ruler of the Universe and a deference to His majesty; that since the exercise is

not sectarian, no justiciable sectarian advantage or disadvantage flows therefrom; and that, in any event, the presence of a scholar at, and his participation in, that exercise is, under the directive of the Board of Education, voluntary.

We conclude that the statutes are not in violation of the Federal Constitution and that the judgment below should be affirmed.

[fol. 53] In Supreme Court of New Jersey

[Title omitted]

Petition for Appeal—Filed January 19, 1951

Considering themselves aggrieved by the final mandate and judgment of this court entered on October 16, 1950, Donald R. Doremus and Anna E. Klein, plaintiffs herein, do hereby pray that an appeal be allowed to the Supreme Court of the United States from said final mandate and judgment and from each and every part thereof; that citation be issued in accordance with law; that an order be made with respect to the appeal bond to be given by said plaintiffs; and that the amount of security be fixed by the order allowing the appeal; and that the material parts of the record, proceedings and papers upon which said final judgment and mandate was based duly authenticated be sent to the Supreme Court of the United States in accordance with the rules in such case made and provided.

Respectfully submitted, Heyman Zimel, Attorney for Plaintiffs-Appellants.

[fol. 54] [File endorsement omitted.]

[fol. 55] Supreme Court of the United States

[Title omitted]

Order Allowing Appeal—Filed January 19, 1951

Donald R. Doremus and Anna E. Klein having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final judgment and

mandate of this court in this cause entered on October 16, 1950, and from each and every part thereof, and having presented their assignment of errors and prayer for reversal and their statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby ordered that said appeal be and the same is hereby allowed as prayed for.

It is further ordered that the appellants post a good and sufficient cost bond in the sum of $250.00 as security for costs of the appeal.

It is further ordered that citation shall issue in accordance with law.

Harold H. Burton, Associate Justice of the Supreme Court of the United States.

Dated this 12th day of January, 1951.

[fol. 55a] [File endorsement omitted.]

[fols. 56-57] Citation in usual form, filed Jan. 19, 1951, omitted in printing.

[fol. 58] In Supreme Court of New Jersey

[Title omitted]

Assignment of Errors and Prayer for Reversal—Filed January 19, 1951

Donald R. Doremus and Anna E. Klein, plaintiffs in the above entitled cause, in connection with their appeal to the Supreme Court of the United States, hereby file the following assignment of errors upon which they will rely in their prosecution of said appeal from the final judgment of the Supreme Court of New Jersey entered on October 16, 1950.

The Supreme Court of New Jersey erred:

1. In affirming the judgment of the Superior Court of New Jersey, Law Division, which granted the defendants' motion for summary judgment and denied the plaintiffs' motion for summary judgment.

2. In holding and concluding that Title 18, Section 14-77 of the Revised Statutes of New Jersey, which required that

at least five verses from that portion of the Holy Bible known as the Old Testament shall be read, or caused to be read, without comment, in each public school classroom or in the general assemblage of classes, at the opening of each school day, is constitutional and does not contravene the provisions of the First Amendment and the Fourteenth Amendment of the United States Constitution.

[fol. 59] 3. In holding and concluding that Title 18, Section 14-78 of the Revised Statutes of New Jersey, which excepts the reading of the Bible and the repeating of the Lord's Prayer from a prohibition against holding any religious service or exercise in any school receiving any portion of the moneys appropriated for the support of public schools is constitutional and not contrary to the provisions of the First Amendment and the Fourteenth Amendment of the United States Constitution.

4. In holding and concluding that the Old Testament of the Holy Bible is not a sectarian book within the prohibition of establishment of religion clause of the First Amendment and the privileges and immunities clause of the Fourteenth amendment of the United States Constitution.

5. In failing to hold and conclude that the compulsory reading from the Holy Bible in the classrooms of the Public Schools of the State of New Jersey is a practice which favors one or more religions, is in aid of one or more religions, and is a preference of one religion over another, contrary to the provisions of the First Amendment and the Fourteenth Amendment of the United States Constitution.

6. In failing to hold and conclude that the permissive repeating of the Lord's Prayer in the classrooms of the public schools of the State of New Jersey is a practice which favors one or more religions, is in aid of one or more religions, and is a preference of one religion over another, contrary to the provisions of the First Amendment and the Fourteenth Amendment of the United States Constitution.

7. In failing to hold and conclude that the provisions of the Revised Statutes 18:14-77 and 18:14-78 are repugnant to the provisions of the First Amendment and the Fourteenth [fol. 60] Amendment of the United States Constitution and to declare the said statutes null and void.

8. In failing to prohibit and restrain the defendants or either of them from observing the provisions of the aforesaid statutes and from engaging in the practices set forth in the said statutes.

WHEREFORE, plaintiffs Donald R. Doremus and Anna E. Klein, pray that the final judgment of the Supreme Court of New Jersey be reversed, and for such other relief as the Court may deem fit and proper.

Heyman Zimel, Attorney for Plaintiffs-Appellants.

[fols. 61-65] [File endorsement omitted.]

[fol. 66] IN SUPREME COURT OF NEW JERSEY

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed Jan. 19, 1951

TO: The Clerk of the Supreme Court of New Jersey:

You will please prepare a transcript of the record in the above-entitled cause to be transmitted to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Complaint.
2. Answer of Defendant Board of Education.
3. Answer of Defendant State of New Jersey.
4. ~~Pretrial~~ Conference Order.
5. Final Judgment.
6. Memorandum of Decision.
7. Notice of Appeal.
8. Mandate on Affirmance.
9. Opinion of the Supreme Court of New Jersey.
10. Petition for Appeal.
11. Order Allowing Appeal.
12. Citation on Appeal.
13. Assignment of Errors and Prayer for Reversal.

[fol. 67] 14. Statement of Jurisdiction of the Supreme Court of the United States.

15. Statement of Plaintiffs-appellants Directing Attention to Paragraph 3 of Rule 12 of Revised Rules of the Supreme Court of the United States.

16. Certificate of Service of Notice of Appeal.

17. This Praecipe.

Heyman Zimel, Attorney for Plaintiffs-Appellants

Dated: January 15, 1951.

[fol. 68] [File endorsement omitted.]

[fol. 69] IN SUPREME COURT OF NEW JERSEY

[Title omitted]

PRAECIPE FOR ADDITIONAL PORTIONS OF TRANSCRIPT—Filed Jan. 31, 1951

TO: The Clerk of the Supreme Court of New Jersey:

You will please prepare additional transcript of the record in the above-entitled cause to be transmitted to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Statement of appellees making against the jurisdiction of the Supreme Court of the United States to review on appeal the judgment in question, including appellees' motion to dismiss or affirm the appeal.

(s) Theodore D. Parsons Attorney General of New Jersey, Counsel for Appellee, State of New Jersey.

(s) Alexander E. Fasoli, Counsel for Appellee, Board of Education of the Borough of Hawthorne, New Jersey.

(s) Henry F. Schenk Deputy Attorney General of Counsel.

Dated: January 31, 1951.

[fol. 70] [File endorsement omitted.]

[fol. 71] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 72] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed March 2, 1951

(a) Appellants adopt for their statement of points upon which they intend to rely on in their appeal to this Court, the points contained in their Assignment of Errors heretofore filed.

(b) Appellants designate the entire record, as filed in the above entitled case, for printing by the Clerk of this Court.

Heyman Zimel, Counsel for Appellants

[fol. 72a] Service of a copy of the within instrument is hereby acknowledged this 28th day of February 1951.

(s) Theodore D. Parsons, Attorney for Defendant, State of New Jersey.

Service of a copy of the within instrument is hereby acknowledged this 21st day of February, 1951.

(s) Alexander E. Fasoli, Attorney for Defendant, Board of Education.

[fol. 72b] [File endorsement omitted.]

[fol. 7] Supreme Court of the United States

Order Postponing Further Consideration of the Question of Jurisdiction Etc.—March 12, 1951.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of the jurisdiction of this Court and of the motion to dismiss or affirm is postponed to the hearing of the case on the merits.

Endorsed on Cover: file no. 55,062 New Jersey, Supreme Court, term no. 5561, Donald R. Doremus and Anna E. Klein, Appellants, vs. Board of Education of the Borough of Hawthorne and the State of New Jersey. Filed February 16, 1951. Term No. 556 O.T. 1950.